



10 September 2021

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Minister for Indigenous Australians  
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Parliament House  
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**Via email:** [Ken.Wyatt.MP@aph.gov.au](mailto:Ken.Wyatt.MP@aph.gov.au)

*spirit of  
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Dear Minister

**RE: NNTC response to the Indigenous Skills, Engagement and Employment Program Discussion Paper**

The National Native Title Council (NNTC) welcomes the 2021-22 budget commitment to develop the new Indigenous Skills, Engagement and Employment Program (ISEP) and the Government's commitment to creating strong and sustained economic recovery and growth that acknowledges the vital role of First Nations in Australia's economy.

This submission is in response to the National Indigenous Australians' Agency (NIAA) call for feedback on the areas of need that Indigenous-specific employment investment can address to inform the ISEP.

In line with the four priority reform areas from the new National Agreement on Closing the Gap partnerships with Australian First Nations, the NNTC stresses the importance of working closely with Prescribed Bodies Corporate (PBCs) in the design of the ISEP for the following four reasons:

1. Native title and PBCs will exist forever so both have to be part of the solution for sustainable skills and employment development and best practice engagement based on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Free Prior and Informed Consent (FPIC);
2. There is a myriad of existing rights with existing and potential employers which can be leveraged;
3. PBCs themselves already hold substantial skills and are potential stimulators of remote and regional economies; and
4. PBCs hold (or potentially hold) important data on measuring the impact of the ISEP.

## 1. PBCs will exist forever and must be part of the solution

Under the *Native Title Act 1993*, native title holders are legally forced to form a Prescribed Body Corporate (PBC) to hold their native title rights and interests. PBCs are culturally and legally complex corporate entities that native title holders are required to establish to hold and manage their recognised native title rights and interests. A PBC must be an Aboriginal and Torres Strait Islander corporation (ATSI Corporation) incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)* (CATSI Act).

Each PBC in Australia:

- Is **unique from each other** as First Nations laws and customs and communities are different around Australia.
- **Exists in perpetuity** as their native title rights and interests exist forever.

There are currently over 230 PBCs across Australia with native title being held over almost 40 percent of Australia's land and waters. Based on the current number of native title applications the number of PBCs is likely to increase to near 300, with native title covering around 60 percent of the country. This number excludes the number of traditional owner corporations that perform PBC-like functions under comprehensive settlements or alternative legislation such as the *Victorian Traditional Owner Settlement Act 2010* (the TOS Act).

In accordance with Articles 5, 21, 23 and 32 of UNDRIP, Indigenous peoples have the right to determine their own economic development and conditions, including the identification of priorities and strategies. By placing PBCs at the centre of the ISEP, it will ensure that the program is working in partnership with First Nations and achieves:

- Local decision making and governance – working in partnership with First Nations;
- Investment in First Nations corporations (PBCs) that will exist in perpetuity – long term skills investment; and
- Local solutions that are relevant and culturally appropriate.

There is a range of existing desktop materials regarding PBC economic and employment aspirations that can be drawn upon in partnership with direct (paid) engagement with PBCs in the design of the project. For example, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) [website](#) has several PBC publications, including the [Report on the 2019 Survey of Prescribed Bodies Corporate](#).

The NNTC has produced several previous submissions on economic development of native title holders and PBCs, including an economic development issues paper, which outlines some of the existing impediments for First Nations businesses and proposes a Regional Australia portfolio and policy framework that places PBCs at the centre of regional economic development.

## **2. Existing rights with existing and potential employers which can be leveraged**

Native title determinations offer Aboriginal people, governments, local governments, and industry an opportunity to work on a comprehensive approach to development at a local, regional, and national level.

Through agreement-making native title claim groups and PBCs can negotiate opportunities such as 'gaining access to traditional land in exchange, usually, for a package of economic benefits. Some of the economic component can be direct cash benefits to the group, but the majority of the agreement usually sets out long term benefits through investment, employment and training. In an increasing number of cases agreements can also include provisions for the development of business enterprise, including preferred tender contracts for already established local Aboriginal businesses.<sup>1</sup> The ISEP needs to be flexible enough to build upon existing agreements and ensure that they are taken up and implemented.

## **3. PBCs themselves already hold substantial skills and are economic vehicles**

A strengths-based approach to ISEP means that it needs to acknowledge, include, and work with the substantial strengths, skills and capabilities that are already present in First Nations communities. The ISEP could utilise a strengths-based community mapping approach, such as Assets Based Community Development (ABCD), which maps the skills and capabilities that PBCs or regional groups of PBCs hold in this space as a way of also identifying the barriers to employment and skills gaps in that region.<sup>2</sup>

PBCs are economic and employment vehicles (or hold subsidiaries) that already have skills and experience in this space. There are several examples of local and regional economic development initiatives with PBCs that can be drawn upon in the development of this program. For example, the Indigenous Enterprise Development at the Kimberley Land Council.

The NNTC encourages NIAA to work directly with Native Title Representative Bodies and Service Providers (NTRB/SPs) to capture existing local and regional models of traditional owner led economic development that meets the aspirations and obligations of native title holders.

## **4. PBCs hold (or potentially hold) important data on measuring the impact of the ISEP**

An important part of [Indigenous Data Sovereignty](#), include principles that the ISEP should adhere to for First Nations to be able to evaluate and manage the data from policy programs that involve First Nations people. PBCs are a suitable vehicle to provide a meaningful and accurate evaluation and measure of the impact of the ISEP.

The NNTC suggests that the NIAA engage PBCs to design an effective and efficient evaluation method that allows for PBCs to also hold the data from the program.

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<sup>1</sup> National Native Title Council, Issues Paper: Indigenous Economic Development, p.3.

Any PBC engagement in this space should be paid engagement via direct employment or sufficient remuneration. Remuneration ensures meaningful and prepared contributions, is respectful of First Nations expertise, time, and labour, and provides more paid work opportunities for First Nations peoples.

I hope the information outlined in this submission is useful for your purposes, however if you have any queries or require any further information please do not hesitate to contact the NNTC's Director of Policy, [REDACTED] at your convenience.

[REDACTED] y,

Chief Executive Officer